

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

In the Matter of the Application of

ILEEN VARNO,

Plaintiff,

-against-

COUNTY OF SCHENECTADY, MICHAEL GERACI,
DOMINIC DAGOSTINO, JAMES BARRETT

Defendants.

**NOTICE OF
REMOVAL**

Case No.: 1:22-cv-150 (BKS/CFH)

*Jury Trial
Demedanded,*

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Defendants, County of Schenectady, Michael Geraci, Dominic Dagostino and James Barrett (County Defendants), hereby petition for the removal of the above captioned case as follows:

1. This Notice of Removal is filed pursuant to 28 U.S.C. §1441 *et seq.* to remove the state court action entitled *Ileen Varno v County of Schenectady, et. al.*, Supreme Court, Schenectady County, Index No. 2022-2 (the “State Court Action”) to the United States District Court for the Northern District of New York, which has original jurisdiction over this action on the basis that it involves a claim or right arising under the Constitution pursuant to 28 U.S.C. §§1331, 1441(c).

2. The State Court Action was commenced on January 3, 2022, by the filing of a Summons with Notice, a copy of which is annexed hereto as **Exhibit A**.

3. On January 14, 2022, County Defendants filed a Notice of Appearance and Demand for Complaint, a copy of which is annexed hereto as **Exhibit B**.

4. On February 3, 2022, plaintiff filed a Complaint that only contained state law causes of action, a copy of which is annexed hereto as **Exhibit C**.

5. On February 8, 2022, plaintiff filed a Verified Amended Complaint that contained a federal claim pursuant to 42 USC section 1983, a copy of which is annexed hereto as **Exhibit D**.

6. It has been less than 30 days since Defendants have been served with the Verified Amended Complaint. A copy of the state court electronic docket report is attached hereto as **Exhibit E**, which demonstrates that it has been less than 30 days since Defendants have been served with the Verified Amended Complaint. Service occurred on February 8, 2022.

7. As set forth in the Verified Amended Complaint, Plaintiff seeks, among other things, recovery of money damages for alleged violation of 42 USC section 1983 as well as state law claims pursuant to the New York State Constitution, New York Human Rights Law and breach of contract.

8. This Court has original jurisdiction, pursuant to 28 U.S.C. Sections 1331 and 1441(c), as Plaintiff's claim concerns a federal question, to wit: alleged violation of federally protected civil rights pursuant the Fourteenth Amendment to the United States Constitution and the action may therefore be removed to this Court pursuant to 28 U.S.C. sec. 1441(c).

9. Pursuant to 28 U.S.C. sec. 1441(c), because a separate and independent Federal Claim conferred by 28 U.S.C. sec. 1331 exists, removal of the state law claims against all Defendants is warranted contingent upon Supreme Court granting plaintiff's application to file a late notice of claim.

10. On February 8, 2022, plaintiff filed a motion (which technically is an application) to serve a late notice of claim (Exhibit E). That application remains with Supreme

Court, as this Court does not have jurisdiction over such an application (See *Chodkowski v. County of Nassau*, 2018 U.S. Dist. LEXIS 237296 [EDNY 2018]).

11. Based on the foregoing, it is respectfully submitted that Plaintiff's federal section 1983 claim and state law claims share a common nucleus of operative facts, such that Plaintiff should be expected to try them all on one judicial proceeding. Therefore, it is respectfully submitted that this Court exercise supplemental jurisdiction pursuant to 28 U.S.C. Sec. 1367(a) over all the above state law claims should the application be granted in state court in order to advance judicial economy, convenience, comity and fairness to the litigants. Since the application to file a late notice of claim is a separate state law proceeding it remains in state court.

12. Pursuant to 28 U.S.C. §1446(d), written notice of the filing of this Notice of Removal is being given to the Plaintiff by serving a copy hereof upon her counsel by regular mail. A copy of this Notice of Removal will also be filed with the Clerk of Schenectady County Supreme Court and is attached hereto as **Exhibit F**. Both are also receiving as such through filing on the New York State Courts Electronic filing system.

13. This notice is being filed with this Court within thirty (30) days of the receipt by Defendants of a copy of the Verified Amended Complaint setting forth the claim for relief upon which such action is based.

WHEREFORE, Defendants respectfully requests that the above-entitled action, other than the Motion (Application) to File a Late Notice of Claim, be removed from Supreme Court of the State of New York, Schenectady County, to this Court and should that application be granted then the state law claims transfer to this Court.

DATED: Albany, New York
February 16, 2022

GOLDBERG SEGALLA LLP

By: 

Jonathan M. Bernstein

Attorneys for Defendants

8 Southwoods Blvd., Suite 300

Albany, New York 12211

Tel. No.: (518) 463-5400

TO: Ryan Michael Finn
Finn Law Offices
Po Box 966
Albany, NY 12201

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2022, I electronically filed the foregoing NOTICE OF REMOVAL (with supporting exhibits), PETITION FOR REMOVAL, and CIVIL COVER SHEET, with the Clerk of the Northern District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case: NA

And, I hereby certify that I have mailed the foregoing by the United States Postal Service, and electronically filed via New York State Courts Electronic Filing to the following participants:

Ryan Michael Finn
Finn Law Offices
Po Box 966
Albany, NY 12201

Schenectady County Clerk's Office
620 State St, 3rd Fl
Schenectady, NY 12305

/s/ Michele Wicks
Michele Wicks
Goldberg Segalla LLP
8 Southwoods Boulevard, Suite 300
Albany, New York 12211
518-463-5400
mwicks@goldbergsegalla.com